

DOCKET NO.: 2021-343
REGARDING: East Carroll Parish Hospital Service District
ATTORNEY: David Bordelon

The question is whether the East Carroll Parish Hospital Service District is within the same governmental entity as the East Carroll Parish Council for purposes of Section 1119B(1), since the sister-in-law of the East Carroll Parish Police Jury President is the only qualified candidate for Project Manager for the Hospital's clinic project.

FACTS

Pursuant to La. R.S. 46:1051, *et. seq.*, the East Carroll Parish Police Jury created the East Carroll Parish Hospital Service District ("Hospital District") by ordinance on January 10, 1951. The Hospital District is governed by a five-member Board of Commissioners, each of whom are appointed by the East Carroll Parish Police Jury. La. R.S. 46:1053A. The Board has the authority to advise the Police Jury on problems concerning the operation of the hospital. La. R.S. 46:1055A. Additionally, the Board may enter into special services agreements with any person to manage, operate, and administer the hospital, or any part thereof. La. R.S. 46:1055B. The Hospital District is considered a political subdivision of the State of Louisiana (La. R.S. 46:1064A.) and a component unit of East Carroll Parish.

CONSTITUTIONAL PROVISIONS

Art. 6, § 15 of the La. Constitution provides:

The governing authority of a local governmental subdivision shall have general power over any agency heretofore or hereafter created by it, including, without limitation, the power to abolish the agency and require prior approval of any charge or tax levied or bond issued by the agency.

Art. 6, §44 provides the following definitions:

- (1) "Local governmental subdivision" means any parish or municipality.
- (2) "Political Subdivision" means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.

ETHICS CODE (LA. R.S. 42:1101, et seq.)

Section 1119B(1), states:

No member of the immediate family of a member of a governing authority ... shall be employed by the governmental entity.

La. R.S. 42:1102(2)(a)(vi) defines “agency,” for public servants of political subdivisions, as the agency in which the public servant serves, except that for members of any governing authority and for the elected or appointed chief executive of a governmental entity, it shall mean the governmental entity.

La. R.S. 42:1102(11) defines “governing authority” to mean the body which exercises the legislative functions of a political subdivision.

La. R.S. 42:1102(12) defines “governmental entity” to mean the state or any political subdivision to which the elected official is elected.

La. R.S. 42:1102(17) defines “political subdivision” to mean any unit of local government, including a special district, authorized by law to perform governmental functions.

La. R.S. 42:1119(2)(b)(i) provides the following exception to the nepotism prohibitions for immediate family members of public servants who are a member of a hospital service district board or a member of the parish governing authority:

(b)(i) Any hospital service district or hospital public trust authority located in such a district may enter into an initial recruiting contract with or employ **as a health care provider, a licensed physician, a registered nurse, or an allied health professional who is a member of the immediate family** of any district board, authority, **or parish governing authority** member or of the chief executive of the district or authority provided that such family member is the only qualified applicant who has applied for the position after it has been advertised for at least thirty days in the official journal of the parish and in all newspapers of general circulation in the parish where the hospital is located. The chief executive and any member of a board of a hospital service district or hospital public trust authority which enters into an initial recruiting contract with or employs such physician, registered nurse, or allied health professional shall recuse himself from any decision involving the promotion, discipline, discharge, or assignment of any such employee who is a member of his immediate family.

NOTE: This exception would not be necessary if the Hospital District was not considered a part of the agency of the parish governing authority and the parish president.

NOTE: This exception is not being applied here because the sister-in-law is not one of the listed categories of professionals.

HOSPITAL SERVICE DISTRICTS (La. R.S. 46:1051, *et seq.*)

§1051. Authority to create and alter the boundaries of districts

A. The police juries of parishes are authorized and empowered, upon their own initiative, to form and create one or more hospital service districts within the respective parishes, or with agreement among police juries concerned, to combine two or more parishes into a single hospital service district with such names as the police juries may designate, and, in so doing, police juries may create hospital service districts whose boundaries overlap those of other hospital service districts.

§1053. Commission; qualification of members; appointment; vacancies; compensation; removal of commissioners; certain powers

A. Any hospital service district formed or created under the provisions of this Chapter shall be governed by a board of five commissioners, hereafter referred to as commission, who shall be qualified voters and residents of the district. The commission shall be appointed by the police jury of the parish.

§1055. Powers and duties of Commission

A. In addition to the duties defined elsewhere in this Chapter, the commission shall have the duty and authority:

- (1) To represent the public interest in providing hospital and medical care in the district.
- (2) To advise the police jury and the hospital director on problems concerning the operation of the hospital and other facilities.
- (3) To make, alter, amend, and promulgate rules and regulations governing the conduct of the hospital.
- (4) To conduct hearings and pass upon complaints by or against any officer or employee of the district.
- (5) To review and modify, or set aside any action of the officers or employees of the district which the commission may determine to be desirable or necessary in the public interest.
- (6) To appoint, with the approval of the medical staff, a director of the hospital and to perform such other duties as may now or hereafter be required by law.
- (7) To appoint the necessary standing and special committees which may be necessary to carry out the purposes of this Chapter.
- (8) To establish rates of pay for the use of facilities provided by the district.
- (9) To enter into lease agreements with recognized and duly constituted nonprofit associations which are primarily engaged in the operation of hospitals.

§1064. Districts as political subdivisions; acquisition of land and physical facilities; special maintenance taxes; incurring debt; bonds; audits

A. **The hospital service districts as defined in R.S. 46:1072 are hereby declared to be political subdivisions of the state,** and for the purpose of purchasing and acquiring lands and purchasing, acquiring, constructing and maintaining hospitals, nursing homes, physicians and dentist offices, laboratories, and other physical facilities necessary to carry out the purposes of this Chapter. Title to such land and physical facilities shall be in the public. Such districts shall be subdivisions of the state of Louisiana within the meaning of the laws of Louisiana relating to the voting and levy of special maintenance taxes incurring debt and issuing bonds therefor, including particularly but without limitation R.S. 39:504.1, 515-518, 551-571, 575-577, 611-617, 701-706, and 911, and shall be authorized to issue hospital revenue bonds pursuant to R.S. 39:559.1 and 1011-1024, and as otherwise permitted by law. Hospital service districts are hereby further authorized to issue bonds pursuant to the foregoing to refund outstanding bonded indebtedness whether issued by such hospital service district or by another political subdivision of the state on behalf of such hospital service district or in respect of any hospital facilities owned or operated by any such hospital service district.

B. Each district shall cause to be conducted annually, by a duly qualified certified public accountant, an audit and examination of its books and accounts, said audit to be filed with the legislative auditor within six months after the close of the period audited. The legislative auditor shall have the authority to prescribe the terms and conditions of any such audit conducted by a certified public accountant and to require the district to present said terms and conditions to him for approval prior to the commencement of said audit. The legislative auditor shall have access to the working papers of the accountant during the examination and subsequent to its termination. The legislative auditor is authorized to conduct an independent audit and examination of the books and accounts of any hospital service district pursuant to R.S. 24:513.

NOTE: The Legislative Auditor reports for East Carroll Parish Hospital Service District provide that the Hospital District is a political subdivision of the State of Louisiana and a component unit of East Carroll Parish.

JURISPRUDENCE

The courts have not analyzed this question with regard to the East Carroll Parish Hospital Service District.

The closest case is *Bagert v. State Board of Ethics for Elected Officials*, 588 So.2d 1264 (La. App. 1 Cir. 1991)(attached). In *Bagert*, the Court determined that the St. Tammany Parish Hospital Service District No. 2 was not an agency of St. Tammany Parish since the District was specifically created by the Louisiana Legislature in Act 180 of 1984. It was not created by St. Tammany Parish pursuant to the authority of La. R.S. 46:1051. Since St. Tammany Parish did not create the District, the District was an autonomous unit of state government, except for the two powers specifically granted to the Parish to appoint and remove commissioners.

PRIOR ADVISORY/CONSENT OPINIONS

No. 2019-117: The Board concluded that the Pointe Coupee Hospital Service District No. 1. Would not fall under the agency of the Pointe Coupee Parish President, since the District was a political subdivision of the State.

No. 2017-1122: The Board concluded that the Pointe Coupee Hospital Service District No. 1 would fall under the agency of the Pointe Coupee Parish President. Major Thibaut, as Pointe Coupee Parish President, would be prohibited from receiving compensation from a vendor of the District for any new transactions. *** See No. 2019-117 for opposite determination. ***

No. 2016-442: The Board concluded that the exception in §1119(2)(b)(i) would allow the immediate family member of the Lafourche Parish Council member to be employed by any of the three Lafourche Hospital Service Districts in Lafourche Parish.

No. 2015-880: The Board concluded that §1113 would prohibit a business owned by a member of the West Feliciana Parish Council from entering into transactions with the West Feliciana Parish Hospital, since the hospital was created by the West Feliciana Parish Council.

No. 2011-313: The Board concluded that the exception in §1119(2)(b)(i) would allow the immediate family member of the Vermilion Parish Police Jury to be employed by the Vermilion Parish Hospital Service District No. 1.

No. 2010-1107: The Board concluded that 1111C(2)(d) would apply to Justin Cox, in the event he was elected to the Pointe Coupee Policy Jury, while Mr. Cox was also employed by Acadian Ambulance. Acadian Ambulance held a contract with the Pointe Coupee Hospital Service District No. 1. The Board applied the exception of 82-02(D) to this particular prohibition.

No. 2006-906: The Board concluded that the Vermilion Parish Hospital Service District was under the agency of the Vermilion Parish Policy Jury.

No. 2002-713: Consent Opinion in which a violation of 1119B was found to have occurred by virtue of the employment of Mary Marino with the St. Charles Parish Hospital, while her husband, Lance Marino, served as a member of the St. Charles Parish Council.